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In The

Supreme Court of The United States

OCTOBER TERM, 1974

No. 74-576

W. L. STERRETT, et al.,

Petitioners,

v.

JOSEPH TAYLOR, et al.,

Respondents.

CLARENCE JONES, et al.,

Petitioners,

v.

JULIUS D. PERRY, et al.,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

Your Petitioners [1] respectfully pray that a writ of

1. The Petitioners consist of W. L. Sterrett, Mel Price, Joe Rich, Jim Tyson and Roy Orr, members of the Commissioners Court of Dallas County, Texas, (Joe Rich has succeeded John Whittington and Roy Orr has succeeded Denver Seale on the Commissioners Court); Clarence Jones, Sheriff of Dallas County, Texas (succeeding James E. Decker); Allen Sweatt, Chief Jailer (succeeding E. L. Holman); and J. N. Pickard, County Health Officer; individually and in their official capacities in Dallas County, Texas. The Respondents are Joseph Taylor, James Douglas Thompson, Charles William Bruce, John Henry Woods, Jr., Julius Dwain Perry, Sr., James Edward Clayton, and George Byron Hamlet, individually and on behalf of all others similarly situated.

certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on August 19, 1974.

OPINIONS BELOW

The opinion of the United States Court of Appeals is reported in 499 F.2d 367 (5th Cir. 1974), a copy of which is attached hereto as Appendix A.

The opinion of the United States District Court for the Northern District of Texas, which was affirmed in part and vacated in part and remanded by the United States Court of Appeals for the Fifth Circuit, is reported at 344 F.Supp. 411 (N.D. Tex. 1972), a copy of which is attached hereto in Appendix B.

GROUNDS FOR JURISDICTION

The judgment sought to be reviewed was entered by the United States Court of Appeals for the Fifth Circuit on August 19, 1974. Appendix A. The judgment affirmed in part and vacated in part and remanded the judgment of the United States District Court for the Northern District of Texas entered June 5, 1972.

The statutory provisions believed to confer on the United States Supreme Court jurisdiction to review the judgment in question by writ of certiorari is 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED FOR REVIEW

1. Should the district court have abstained from interpreting Article 5115 of the Texas Revised Civil Statutes or,

in the alternative, did the district court make, and the court of appeals affirm, an erroneous interpretation?

2. What are the constitutional requirements proscribed by the Eighth Amendment for conditions and facilities in local jails?

3. Does a single judge district court have jurisdictional authority to affirmatively enjoin state officials to provide facilities for jails in excess of those designated by statute?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent constitutional provisions are the Eighth and Fourteenth Amendments to the United States Constitution. The pertinent statutes are Article 5115, 5116 and 5117 of the Texas Revised Civil Statutes and Article 2.18 of the Texas Code of Criminal Procedure. These constitutional provisions and statutes are set out in Appendix C.

STATEMENT OF THE CASE

The Respondents, inmates in the county jail of Dallas County, Texas, initiated this class action suit in federal district court seeking injunctive relief from conditions and practices that allegedly violated the prohibitions against cruel and unusual punishments of the Eighth Amendment to the United States Constitution. Jurisdiction of the district court was invoked through 28 U.S.C. § 1343 and 42 U.S.C. § 1983 on the basis that the civil rights of the inmates were involved. The Respondents further urged the district court to consider non-federal claims under its ancillary jurisdiction.

Immediately prior to trial, the case of *Perry v. Decker* was consolidated with *Taylor v. Sterrett*. The *Perry* co...plaint focused upon the adequacy of medical services in the jail, while the *Taylor* complaint covered a much wider scope of conditions, practices and policies in the jail.

After a personal tour of the jail facilities and a trial on the merits, the court made the following relevant findings of fact.

The county jail is located in two buildings referred to as the old jail and the new jail. The new jail is located in the new County Government Center and was designed to accommodate 1220 inmates. The quarters in use in both buildings at the time of the trial, June, 1972, had a design capacity of 1370 inmates. The number of inmates actually held generally exceeded the design capacity. During the first half of May, 1972, the average peak number of inmates per day averaged 1589. During 1971 the average daily number per month varied from 1446 to 1814. The women's section of the jail located on one floor of the new jail consisted of 25 cells containing 198 bunks. On the day of the trial there were 92 female inmates. Excess bunks in the women's section could not be used to house male inmates due to design limitations not permitting segregation of male and female inmates within that area.

Most of the inmates were assigned to cells each with 8 to 12 bunks which open into a "day room." These entire areas, which are referred to as "tanks," vary in design capacity from 24 to 36. In addition to ten tanks, there were 168 cells without a day room, opening into a corridor, each

containing several bunks. The tanks were overcrowded, at the time of the trial, having approximately 15 more inmates than bunks. Those inmates not assigned a bunk slept on mattresses in the day room. The hospital ward for men was also overcrowded. It has 48 beds and on the day of the judge's visit had 62 inmates admitted. Persons without beds slept on mattresses on the floor.

The jail also has a number of solitary cells. They have dimensions of 4'3" x 5'11", 6'11" x 5'1", and 7'1" x 6'. Only four had running water; none drinking fountains. The toilet facilities in the solitary cells consisted of a hole in the floor which could be flushed from the outside of the cell. Light was provided 24 hours a day by an electric globe. There were no bunks in the solitary cells, but prisoners were given mattresses.

The jail medical facilities consisted of a hospital ward for men with 48 beds and one for women with 18 beds. A nurse was on duty 24 hours each day and a doctor was on call throughout the day. Upon entrance, inmates were tested for tuberculosis and venereal disease. At the time of trial, dental care included both filling and tooth extraction.

Recreation for the inmates consisted of reading and playing cards and dominos. There was no designated area or program for exercise. However, the court made no finding that calisthenics or in place exercises were prohibited or insufficient. There was exposure to sunlight in the new jail through translucent windows.

There was no general program of rehabilitation or education at the jail. The jail performed exclusively a

custodial function. Some months before the trial a Chaplain had begun a small pilot program of teaching selected prisoners some rudimentary educational subjects.

At the time of the trial, the inmate population of the jail consisted of arrestees, persons awaiting trial, persons convicted of misdemeanors serving their sentence, and convicted felons awaiting transfer to the Texas Department of Corrections or a decision on appeal. At that time there was no attempt to segregate the various classes of prisoners; however, the Sheriff was beginning to institute a classification system based upon maximum, medium and minimum security risk. Pre-trial detainees were not permitted to participate in the limited educational program nor obtain a trusty job within the jail.

The court noted that the Sheriff testified that the lack of adequate supervisory personnel was a major restriction on providing meaningful programs for the inmates. There were a total of 99 guards divided into three shifts. Each shift had to supervise five floors of the new jail and the old jail, housing a total of more than 1500 inmates. The role of the guards was limited to housekeeping and security measures.

The court also made other findings not relevant to this application regarding mail censorship, policies on books and periodicals, and disciplinary procedures.

The court began its analysis of the applicable law by holding that Article 5115 of the Texas Revised Civil Statutes provided statutory design minimums which the Dallas County jail did not meet. Article 5115 provides, among other things, that solitary cells shall have a minimum of 40 square

feet and that larger cells must have a minimum of 18 square feet per person. Sanitary facilities, consisting of a water closet and combination lavatory and drinking fountain must be provided in each solitary cell and in the larger cells for each twelve inmates or fraction thereof. Bunks must be provided for all prisoners. Tanks should be designed for a maximum of twenty-four prisoners each, and thirty per cent of all prisoners should be in single cells. Although the court held that certain design features of the Dallas County jail did not conform to the provisions of Article 5115, it considered overcrowding as the major factor in complaints about the physical facilities.

After reviewing the charges of the inmates that the conditions of the jail subjected them to a cruel and unusual punishment, the court stated, "Rehabilitation must be the overriding goal of our correctional institutions." The court further held that the lack of any program of recreation or exercise was an important deficiency, noting that other courts had considered lack of exercise "in the context of being cruel and unusual punishment." The court did hold that use of the solitary cells would be cruel and unusual punishment. The court made other holdings with regard to disciplinary procedures not significant here.

Although the new jail was only opened in 1966, the court concluded that the county jail was in "desperate need of upgrading and expansion." The court therefore enjoined the Commissioners Court from violating Article 5115 and required that certain specific steps be taken immediately to include the provision of sufficient cells with a design capacity equal to the highest number of inmates in the jail

during any one day in 1972. The court also directed the Commissioners Court to plan a new jail facility with recreational, educational and chapel facilities, and in the interim to provide recreational facilities for the present jail. (A suggestion was made that the roof of the County Government Center building be converted for interim recreational facilities.) The court directed that the Sheriff not place inmates in a cell of less than forty square feet, in a solitary cell without the required sanitary facilities, or in a cell already filled to its design capacity. The Commissioners Court was directed to hire additional jail guards. The court also made other directions relating to access of investigators to the inmates, mail censorship, periodical policies, medical examinations of food handlers, and discipline procedures not applicable to this application.

The Petitioners appealed to the Fifth Circuit. The Fifth Circuit after an extensive delay, affirmed the district court's orders concerning the building of a new jail facility meeting the specifications of Article 5115, implementing interim specified expansion of the present facilities, requiring the provision of outdoor recreational, educational and chapel facilities, restricting where the Sheriff can place prisoners and requiring medical examinations of food handlers, as enforcement of the applicable state law. The Fifth Circuit also affirmed the district court's orders regarding reading material policies and practices. The circuit court vacated and remanded the trial court's orders on mail, disciplinary procedures, and the limitation on the access of the district attorney's investigators to inmates.

The Fifth Circuit made no explicit ruling on the district court's order that the Commissioners Court hire more guards.

REASONS FOR GRANTING THE WRIT

The Court should grant a review on writ of certiorari of the judgment of the United States Court of Appeals for the Fifth Circuit because portions of the decision of that court decide important questions of federal law which have not been, but should be, settled by the Supreme Court. Furthermore, portions of the Fifth Circuit's decision conflict, at least in principle, with decisions of this Court and prior decisions of the Fifth Circuit. Finally, the district court's unprecedented interpretation of Texas law, affirmed by the Fifth Circuit, has a momentous impact on Texas jails, condemning in essence all but five of over 247 county jails in Texas.

In the past few years prisoners in local community jail facilities have been initiating extensive litigation attacking the physical conditions and practices in jails for allegedly violating the Eighth Amendment's prohibition against cruel and unusual punishments. In light of the importance of jails in the correctional system throughout the United States, it is essential that there be a pronouncement by the Supreme Court as to the requirements these facilities must meet to comply with the Eighth Amendment.

The important position of the jail in the national correctional picture has long been recognized.

> "From many points of view, the jail is the most important of all our institutions of imprisonment. The

> enormous number of jails is alone sufficient . . . to make [one] realize that the jail is, after all, the typical prison in the United States. . . .From two-thirds to three-fourths of all convicted criminals serve out their sentence in jails. But this is not all. The jail is, with small exception, the almost universal detention house for untried prisoners. The great majority, therefore, of penitentiary and reformatory prisoners have been kept for a period varying from a few days to many months within the confines of a county or municipal jail. Then, too, there is the class, not at all unimportant in number, of individuals, who, having finally established their innocence, have been set free after spending some time in the jail awaiting trial. Important witnesses also are detained in jail, and it is used at times for still other purposes, even serving occasionally as a temporary asylum for the insane. The part, therefore, which the jail plays in our scheme of punishment cannot be overestimated. Whether for good or for evil, nearly every criminal that has been apprehended is subjected to its influence." *Louis N. Robinson, Penology in the United States*, 32 (John C. Winston, 1921).

In the fifty years that have passed since that assessment was written, the significance of the jail has not lessened. There are more jails than any other type of correctional institution in the United States. The jail serves as the intake point for the entire criminal justice system. Indeed, the National Advisory Commission on Criminal Justice Standards and Goals predicts that a current trend toward the decreased use of major state institutions for confinement will increase the size and scope of the burden the jails bear. *National Advisory Commission on Criminal Justice Standards and Goals, Report on Corrections*, 274 (U.S. Government Printing Office 1973) (hereafter cited as *Advisory Commission, Corrections*).

A 1970 census disclosed that there were 4,037 jails in the United States at that time. A jail being defined as any individual facility for the detention of those persons convicted or suspected of crimes operated by a local government unit with detention authority for at least 48 hours. These institutions employed an equivalent of 28,911 full-time employees and had an inmate population of 160,863 on March 15, 1970. *U.S. Law Enforcement Assistance Administration, National Jail Census 1970* (U.S. Government Printing Office 1971). The average number of inmates in local jails approaches that in the major correctional facilities of all fifty states, which was an average number of 195,910 for approximately the same time period. *Advisory Comm'n, Corrections*, at 344, Table 11.2.

In the instant case the district court held that the Eighth Amendment required the local authorities responsible for the jail of Dallas County, Texas, to provide inmates with outdoor recreational facilities, educational facilities and a chapel.[2] The only authorities cited by the district court for these requirements were *Sinclair v. Henderson*, 331 F. Supp. 1123 (E.D.La. 1971) and *Morris v. Travisono*, 310 F.Supp. 857 (D.R.I. 1970), with regard to the issue of recreational facilities. Neither of those cases directly compares to the instant case. Both of those cases concerned

2. The Fifth Circuit mistakenly assumed that this portion of the district court's order, paragraph 2, was specified by state law. However, a reading of Article 5115, the Texas statute covering design of jail facilities, fails to disclose any requirement for an outdoor exercise facility, educational facilities or a chapel. Furthermore, the trial court clearly recognized that it was imposing additional requirements and, therefore, used a separate paragraph in its order to require these facilities.

a major state correctional institution, which had exercise facilities which were denied to a certain group of inmates. The courts in those cases merely ordered that arrangements be made for those groups of inmates to be given the opportunity to use the same facilities already available. In contrast, the Dallas County jail is located in the downtown area of Dallas, a major metropolitan area, with no recreational yard in existence nor with the possibility of obtaining one without enormous expense.

In conflict with this holding of the court below is that in *Theriault v. United States*, 481 F.2d 1193 (5th Cir. 1973) where the conditions of the city jail of Mobile, Alabama, were held not to violate the Eighth Amendment. Yet, the 1970 Jail Census discloses that the Mobile city jail has no recreation or educational facilities. *U. S. Law Enforcement Assistance Administration and U. S. Bureau of the Census, Local Jails*, 162 (U. S. Government Printing Office, 1973). Indeed the 1970 census of local jails disclosed that only 13.6% of local jails for cities and counties with more than 25,000 population have any recreational facilities. *National Jail Census 1970* at 18. In Texas, of 322 jails for cities and counties with more than 25,000 population, only seven have any recreational facilities. Significantly, five of those seven facilities have an average daily inmate population of sixteen or less inmates. The only two facilities providing recreation that handle a sizable number of inmates are a specially built rehabilitation center and a rehabilitation farm. *Local Jails*, at 293-304. The assessment that these jails provide recreational facilities was made by the local jail administrators. *National Jail Census 1970*, at 8. There is no

assurance that the institution's assessment that it provides recreational facilities will satisfy the requirements for recreational facilities some lower courts place on local jails. The Manhattan House of Detention for Men is one of the 13.6% of the jails reporting that it has recreational facilities. *Local Jails*, at 259. Its recreational facilities are located on the roof of the building (similar to the suggestion of the trial court in the instant case as a temporary solution to its direction to provide an outdoor recreation area). The Manhattan inmates spent 50 minutes a week on the roof (an analysis of the roof-top exercise area proposed for the Dallas County jail resulted in comparable times that Dallas County jail inmates would be able to utilize a roof-top exercise area). The trial court in *Rhem v. Malcolm*, 371 F.Supp 594 (S.D. N.Y. 1974) held that such limited outdoor exercise periods constituted a cruel and unusual punishment in violation of the Eighth Amendment. That district court held that the difficulty of providing space for exercise in central New York City was unacceptable as a justification for not providing considerably more exercise time for inmates. Hence it appears that possibly more than 90% of all local jails in the United States could not meet this criteria, if it is indeed a constitutional requirement.

In support of its educational facilities requirement, the trial court in the instant case cited *Holt v. Sarver*, 309 F.Supp. 362 (E.D. Ark. 1970). The direction of the court that educational facilities be provided to inmates of the Dallas County jail conflicts in principle with the holding of this Court in *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1973) that, although education is perhaps the most

important function of state and local governments, there is no constitutional right to an education. It would be strange indeed if convicted inmates of correctional institutions have additional constitutional rights to state provided educational opportunities that school aged children do not have! Furthermore, once again the holding that prisoners have a constitutional right to educational facilities would have a tremendous impact on American correctional facilities. Only 10.8% of the jails for cities and counties with more than 25,000 population report any educational facilities. *National Jail Census 1970*, at 18. Also, there is the additional question of how many of those jails that do have some facilities actually have sufficient facilities to provide meaningful educational opportunities to all inmates. The ratios of one academic teacher to 1,333 inmates and one vocational teacher to 1,031 inmates provided by a 1965 national survey indicates that the opportunities are severely limited. *Task Force on Corrections, Task Force Report: Correction*, 75, Table 5 (U. S. Government Printing Office 1967).

The trial court cited no authority for directing that a chapel be provided for use by the inmates. The court's decision to order that chapel facilities be provided is unprecedented. Unlike prior cases dealing with a prisoner's practice of his religion, there is no question involved here about discriminatory practices toward persons of a particular religion. The court found that the inmates do not have the privilege of attending religious services. Since the court obviously felt that such might have some rehabilitating effect on the inmates, it ordered the Petitioners to provide

chapel facilities in a new jail facility. Again the lack of chapel facilities in the Dallas County jail is similar to the vast majority of jails throughout the United States. *Advisory Comm'n, Corrections*, at 276. While it may be constitutionally permissible for a county, in its discretion, to provide a chapel for jail inmates, it is a far different matter for a court to hold that the county's decision not to provide a chapel violates the inmates' constitutional rights. Aritcle 5115 providing for "safe and suitable jails" makes no provision for chapels. Therefore, the district court must have relied upon a constitutional right of the inmates to chapel facilities in order to direct the Commissioners' Court to provide such facilities. Such a holding is difficult to reconcile with the holding in *San Antonio School District v. Rodriguez*, supra. If a school age child has no constitutional right to an education, although the Supreme Court recognizes that "education is perhaps the most important function of state and local governments," *Id.*, at 29, it is difficult to perceive how a jail inmate has a constitutional right to chapel facilities, when the First Amendment prohibits governmental establishment of religion. Indeed, the lower court's order conflicts in principle with prior pronouncements from this Court and other lower courts. As Justice Rehnquist has stated:

> "Presumably prison officials are not obligated to provide facilities for any particular denominational service within a prison, although once they undertake to provide them for some they must make only such reasonable distinctions as may survive analysis under the Equal Protection Clause." *Cruz v. Beto*, 405 U.S. 319, 324 (1972) (Rehnquist, J., dissenting).

The lower court's order contrasts also with the holding in *Coleman v. District of Columbia Commissioners*, 234 F. Supp. 408 (E.D. Va. 1964), that prisoners were not entitled to have a minister of their own choosing or have institution officials provide them with free copies of religious books and periodicals or medals. Once the Dallas County jail starts providing facilities and religious material, however, it will find itself in an enormous administrative problem providing comparable service to inmates of differing religions.

The district court's opinion makes the basis of the above requirements quite clear. "Rehabilitation must be the overriding goal of our correctional institutions. Unless society *subordinates all of the correctional purposes to the goal of rehabilitation*, it faces the paradox of promoting the production rather than the reduction of crime." (emphasis added). There may be great wisdom in the district court's philosophy, but the court lost sight of the fact that it was sitting to enforce constitutional rights of all persons including prisoners, but not to supervise prisons no matter how well the court is qualified or capable of doing so. *Cruz v. Beto*, supra, at 321. Several lower courts, including the district court in the instant case, have utilized the Eighth Amendment as a vehicle to impose their concepts of correctional theory upon the persons charged with providing and operating correctional institutions. In doing so, these courts have attempted to raise the goal of rehabilitation, one of the goals in correctional theory, to a constitutional level. One district court has even intimated that imprisonment per se is unconstitutional because it is not

sufficiently rehabilitative. *Morales v. Schmidt*, 340 F.Supp. 544 (W.D. Wisc. 1972), *revs'd and remanded*, 489 F.2d 1335 (7th Cir. 1973), *opinion on rehearing en banc*, 494 F.2d 85 (1974). This approach runs counter to the recognition by the majority of the members of this Court in *Furman v. Georgia*, 408 U.S. 238 (1972), that other goals, including retribution, are constitutionally permissible in the imposition of punishment. Just recently the Court also recognized deterrence of crime and quarantine of offenders as important functions of the corrections systems. Even more significantly it stated that "central to all other correctional goals is the institutional consideration of internal security within the corrections facilities themselves." *Pell v. Procunier*, ____U.S.____, 94 S.Ct. 2800, 2804 (1974). Indeed, it appears from the separate opinions in *Furman* that a majority of the members of this Court reject the idea that any treatment of convicted persons must be supported by the goal of rehabilitation to be constitutionally permissible, for the rehabilitative consequences of the death penalty are nil. In seeking to implement their own theories of penology, these courts have stepped beyond the proper realm of constitutional interpretation into the field of legislation and administration.

It is imperative that the Supreme Court define the constitutional minimums required for local jail facilities by the Eighth Amendment. If the trial court is correct in that the Eighth Amendment requires that local jails have adequate recreational, educational and chapel facilities, then approximately ninety per cent of the jails in the United States are unconstitutional. On the other hand, if the Petitioners are correct in their contentions that the lack of

those facilities does not constitute cruel and unusual punishment, several lower courts will impose, without the constitutional right and authority, tremendous financial and administrative burdens upon local governmental units by demanding that the court's concepts of corrections be followed. An indication of what a huge burden may be placed upon local communities is that during the same time frame, the Dallas County jail was required to house approximately the same number of prisoners as those held in the main penitentiary in Oklahoma; in fact, the number was roughly sixty per cent of the average daily number of persons incarcerated in the entire Oklahoma prison system. *See Battle v. Anderson*, 376 F.Supp. 402 (E.D. Okla. 1974). Furthermore, there are much fewer resources available to provide facilities in a local jail than in a state-wide penitentiary system. It has been long recognized that in most instances the local area cannot bear the burden of financing large and well staffed jails. *Advisory Comm'n. Corrections*, at 274. Jail facilities must compete with other important community demands, such as schools, hospitals, police activities, fire departments, welfare, and road maintenance to mention just a few items. The local governmental entities are entitled to balance competing demands and place priorities for meeting the needs in all fields.

Another reason the court should grant the writ is that the district court should have abstained from interpreting whether Article 5115 of the Texas Revised Civil Statutes provides general guidelines for jail construction or minimum standards. In this suit the inmates were seeking to

have a federal court interpret a state statute and then enforce the court's interpretation of that statute. However, the role of the federal court is not one of enforcing state statutes. *Simmons v. Jones*, 478 F.2d 321 (5th Cir. 1973). The statute itself specifically provides that the Texas State Department of Health has charge of the enforcement of Article 5115. Furthermore, the statute has internal ambiguities. For example, the statute specifies that a cell for one prisoner only should be at least 40 square feet, but all other cells should have 18 square feet per inmate. Taken literally, the statute permits cells for two inmates with only 36 square feet. Due to the lack of any Texas interpretation of the statute, the court should have abstained from interpreting it. See *Railroad Commission v. Pullman Company*, 312 U.S. 496 (1941). That the trial court's decision to proceed with its own interpretation of Article 5115 and enforce its interpretation was an error of judgment, is highlighted by a subsequent report to the Texas Legislature. A 1973 report by the Texas Legislative Council states that Article 5115 "establishing jail standards is completely unrealistic." The report further notes that only five county jails of 247 inspected by the State Department of Health met the provisions of Article 5115. *Texas Legislative Council, Statutory Standards and Present Conditions in Texas Jails*, Report to 63rd Legislature, 34 (Report No. 62-2, January, 1973). Furthermore, by interpreting Article 5115 in the manner it did, the district court posed an impossible dilemma for the Sheriff. It ordered the Sheriff not to place any more inmates in a cell than it was designed to hold (at the same time requiring that cells designed to hold more

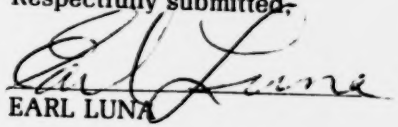
persons than specified as a maximum in Article 5115 not be filled to designed capacity), but at the same time the Sheriff is also required by statute to hold all state and federal prisoners committed to him. *Texas Revised Civil Statutes*, Articles 5116 and 5117, and *Texas Code of Criminal Procedure*, Article 2.18. Thus the Sheriff is faced with violating either the district court's order or the state statutes.

Finally, the court should grant the writ to determine whether the district court should have been a three-judge court to enter the relief it did. The district court held that Article 5115 estabished statutory design requirements for county jails. However, the court's positive injunction that the Commissioners Court provide educational, recreational and chapel facilities is not specified by Article 5115. Therefore the court has in essence ordered the county to build jails not in accordance with the state statute but with the court's own more extensive design requirements. If those more extensive requirements are constitutionally required, Article 5115 is constitutionally defective and the court has in reality enjoined implementation of Article 5115.

CONCLUSION

For the reasons stated above, a writ of certiorari should issue to review the judgment and opinion of the Fifth Circuit.

Respectfully submitted,



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PROOF OF SERVICE

STATE OF TEXAS

COUNTY OF DALLAS

BEFORE ME, the undersigned Notary Public in and for Dallas County, Texas, on this day personally appeared EARL LUNA, who being by me duly sworn, upon oath stated: I, EARL LUNA, am a member of the Bar of the Supreme Court of the United States and am one of the attorneys of record for petitioners herein.

I further state upon oath that upon the 11th day of November 1974, I served copies of the foregoing Petition for Writ of Certiorari on the Respondents, Joseph Taylor, et al., by depositing the same in the United States Mail, with first class postage prepaid, addressed to the following counsel of record in the courts below, at the address indicated, to-wit:

Mr. John F. Jordan, 2818 Maple, #103, Dallas, Texas;

Ms. Sylvia Demerest, Dallas Legal Services Foundation, Ind., 912 Commerce Street, Dallas, Texas;

Mr. Robert L. Byrd, 201 E. Belknap, Ft. Worth, Texas;

Mr. Stanley A. Bass, 10 Columbus Circle, New York, New York 10019 (airmail).

Earl Luna

EARL LUNA

SUBSCRIBED AND SWORN to before me by the said EARL LUNA, this the 11th day of November, 1974.

Notary Public, Dallas County, Texas

APPENDIX A

APPENDIX A

Joseph TAYLOR et al., Plaintiffs-Appellees,

v.

W. L. STERRETT et al., Defendants-Appellants.

Julius Dwain PERRY, Sr., et al., Plaintiffs-Appellees,

v.

James E. (Bill) DECKER et al., Defendants-Appellants.

Joseph TAYLOR et al., Plaintiffs-Appellees,

v.

W. L. STERRETT et al., Defendants-Appellants.

Nos. 72-2443, 72-3689.

United States Court of Appeals,
Fifth Circuit.
Aug. 19, 1974.

Appeals from the United States District Court for the Northern District of Texas.

Before COLEMAN and SIMPSON, Circuit Judges, and RUBIN, District Judge.

COLEMAN, Circuit Judge.

This litigation concerns conditions in the Dallas County, Texas, jail. The opinion of the District Court is reported, Taylor v. Sterrett, 344 F.Supp. 411 (1972). We affirm and remand in part; we also vacate and remand in part for the further consideration of the District Court in light of intervening Supreme Court decisions and the ongoing circumstances of the case.

The District Court properly declined to apply the doctrine of abstention to this case, Procunier v. Martinez, — U.S. —, 94 S.Ct. 1800, 40 L.Ed.2d 224.

In the exercise of its pendent jurisdiction, associated with the federal constitutional claims hereinafter mentioned, the Court ordered steps to insure compliance with the laws of Texas with reference to local prison facilities. The exercise of pendent jurisdiction in this area was correct, Hagans v. Lavine, — U.S. — , 94 S.Ct. 1372, 39 L.Ed.2d 577 (1974); Mobil Oil Corporation v. Kelley, 5 Cir., 1974, 493 F.2d 784.

As to the enforcement of state laws applicable to this jail [Paragraphs 1, 2, 11 and 12 of the District Court order, 344 F.Supp. 422-423], we have recently vacated a stay originally entered here pending appeal. It was specified that this action was without prejudice to the rights of the appellants to seek any justifiable modification in the District Court. It could hardly be expected that a United States District Court, in the exercise of appropriate pendent jurisdiction, would decline the enforcement of laws which the state, of its own volition, had enacted for the improvement of prison conditions within its jurisdiction. The decree of the District Court on these topics is affirmed. The case is nevertheless remanded to enable the Court to enter such modifications, if any, as ought to be had in the light of the ongoing circumstances.

Equity never seeks the impossible nor orders the unreasonable — its orders are adapted to the exigencies of the case. The criticisms which appellants level against the

decree with reference to state requirements at this jail are acordingly left to the sound judicial discretion of the trial court, with full power to assay the merits of these criticisms and decree accordingly.

Paragraphs 5 and 6 of the District Court order prohibiting the unnecessary destruction of prisoner reading matter, etc., is affirmed as a reasonable provision for the protection of First Amendment rights.

As to Paragraph 7 of the District Court order, relating to rules of conduct of inmates, we are informed by the briefs, and there is no suggestion of dispute about it, that the Sheriff has, in fact, filed such rules with the District Court. We therefore consider this issue as substantially moot, but the District Court will be free to enter any modifications or amendments as may appear appropriate within the teachings of Wolff v. McDonnell, post, or any other applicable decision of this or of the Supreme Court.

This brings us to Paragraph 8 of the District Court order, which reads as follows:

"The Sheriff is directed not to allow persons to see prisoners except with the consent or request of the inmates. This has particular reference to 'copout' men, who have had free access to the jail."

As a general proposition we agree that prisoners should be left free of unwanted visitors, contacts, or importunities. Yet, we are of the view that the provisions of Paragraph 8 are too restrictive, especially since the primary jurisdiction of the federal courts in this area is limited to the vindication of rights guaranteed by the federal constitution. Conceiva-

bly, the order would eliminate visits from official investigators engaged in efforts to solve crimes or to perform other legitimate duties. As to prisoners who choose not to be represented by counsel or who, as indigents, are charged with such misdemeanors as not to require counsel, this order could block efforts to bring their cases to a speedy resolution, Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427. Upon remand we suggest that an effort be made specifically to limit this requirement to the evil it is intended to extirpate, if that evil does, in fact, rise to constitutional dimensions.

With reference to Paragraph 9 of the District Court, order, concerning classifications as to pretrial detainees and convicted inmates, we are similarly advised that since the decision of the court below the State of Texas has enacted appropriate legislation by which those convicted of felonies are now held within the state prisons pending appeal. Upon remand, the District Court will reconsider this portion of its order in light of the realities of the case.

Paragraph 10 of the District Court order reads as follows:

"The Sheriff is enjoined from using inmates as corridor bosses to enforce rules and preserve discipline."

We note the key language, "to enforce rules and preserve discipline". We construe this to mean that the use of unarmed trusty prisoners for other functions is left undisturbed.

Since there are guards who could see to enforcing rules and preserving discipline, leaving unarmed trusties to

perform duties affording no real opportunity to mistreat and abuse their fellow prisoners in violation of their constitutional rights, we do not regard this provision as an abuse of equity discretion within the four corners of this case.

Being aware, as we were, that some of the problems raised by this appeal, such as abstention on the state law issues, were pending on writs of certiorari in the Supreme Court of the United States, (and in keeping with our usual practice) we deferred decision in order that we might thereafter act with the guidance of that Court. One important issue below involved the censorship and opening of prisoner mail, Paragraph 4 of the District Court order, 344 F.Supp. 422. This portion of the District Court order is vacated and remanded for further consideration in light of the decisions of the Supreme Court in Wolff v. McDonnell, — U.S. — , 94 S.Ct. 2693, 41 L.Ed.2d — , and Procunier v. Martinez, supra.

Massive precedent in the matter of state prison operation reflects the long maintained attitude of this Court to avoid unnecessary intervention in and interference with the internal administration of state penal institutions, subject to one paramount principle, the Court never hesitates to vindicate the federally guaranteed constitutional rights of those imprisoned therein. We have sought to consider and decide this case within those guidelines.

In the respects indicated, the judgment of the District Court is affirmed and remanded. In others, as set forth, the judgment is vacated and remanded for further proceedings not inconsistent herewith.

With these provisos, the entire cause will now be remanded to the District Court for the exercise of a retained jurisdiction.

United States Court of Appeals
FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1972

No. 72-3689

D. C. Docket No. CA 3-5220

JOSEPH TAYLOR, et al.,

Plaintiffs-Appellees,

versus

W. L. STERRETT, et al.,

Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Texas

Before COLEMAN and SIMPSON, Circuit Judges, and RUBIN, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the order of the District Court appealed from, in this cause be, and the same is hereby, affirmed in part and vacated in part; and that this cause be, and the same is hereby remanded to the said District Court in accordance with the opinion of this Court.

August 19, 1974

Issued as Mandate: SEPTEMBER 10, 1974

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION 3-5220-B

JOSEPH TAYLOR, et al.,

Plaintiffs,

vs

W. L. STERRETT, et al.,

Defendants.

CIVIL ACTION 3-4138-C

JULIUS DWAIN PERRY, SR., et al.,

Plaintiffs,

vs

JAMES E. (BILL) DECKER, et al.,

Defendants.

MEMORANDUM OPINION AND JUDGMENT

This civil rights suit considers conditions of life experienced by prisoners at the Dallas County jail. The plaintiffs, Joseph Taylor, James Douglas Thompson and John Henry Woods, Jr., are inmates at the Dallas County jail. They have brought this action for themselves and as representatives of a class comprising all the inmates of the jail.

The defendants are Dallas County officials charged with responsibility for the maintenance and supervision of the

jail: W. L. Sterrett, County Judge; Mel Price, John Whittington, Jim Tyson, and Roy Orr, members of the Commissioners Court; Clarence Jones, Sheriff; Carl Rowland, Chief Jailer; and J. N. Pickard, M.D., Dallas County Health Officer. The Court acquired jurisdiction over this action pursuant to 28 U.S.C. 1343 which authorizes a federal district court to hear actions under 42 U.S.C. 1983 to redress any deprivation, under color of state law, of any right, privilege or immunity secured by the Constitution. The plaintiffs seek declaratory and injunctive relief under 28 U.S.C. 2201 against certain acts, practices, policies and conditions at the Dallas County jail.

Prior to the hearing on the merits of the complaint, this Court issued a permanent injunction concerning the practice of censorship of the mail by jail officials. The Court ordered the Sheriff to cease opening or censoring mail transmitted between inmates of the jail and the following persons: courts, prosecuting attorneys, probation and parole officers, governmental agencies, lawyers and the press.

Also during the pendency of this suit, the Court entered a preliminary injunction against the jail officials enjoining them from destroying certain reading materials to which the prisoners attached importance and which they do not wish to surrender, provided that the prisoners maintain the material in good condition and do not create a fire or health hazard. These materials included law books, legal materials, legal documents, books, magazines and newspaper clippings.

Before the trial on the merits, the Court visited the facilities of the Dallas County jail with the chief jailer and counsel for the plaintiffs and defendants. During these visits the Court became acquainted with the areas which are the subject of this suit. The Court's familiarity with the physical condition of the jail permits it to take judicial notice of certain matters presented during the trial.

Immediately prior to trial the case of Perry v. Decker, C.A.3-4138-C was consolidated with Taylor v. Sterrett. The Perry case complained of inadequacy of medical services and was brought by Julius Duane Perry an inmate of jail, for himself and as representative of the class of inmates similarly situated.

The plaintiffs have alleged in their complaint a long list of deprivations which they contend constitute individually and collectively a violation of their rights protected by the first, eighth and fourteenth amendments of the Constitution. In addition, the plaintiffs declare that the defendants have failed to comply with State law regarding the operation and supervision of the county jail. The constitutional questions raised by the complaint are substantial and require the intervention of the Court to assess the charges and to redress any infringement on the rights of the class. The Court takes cognizance of the strong pressures on it to abstain from reviewing matters involving prison administration and policy. "It is a rule grounded in necessity and common sense, as well as authority, that the maintenance of discipline in a prison is an executive function with which the judicial branch, ordinarily will not interfere." Sewell v. Pegelow, 291 F.2d 196, 197 (4th Cir-1961). Although the

federal courts are reluctant to interfere with the internal operation of jails, the claims made by the plaintiffs in the present case do not involve mere matters of preference or convenience concerning administrative practices. The allegations raise basic questions of constitutionally protected rights.

The Court recognizes that the plaintiffs are prisoners held either for conviction of a crime or under charge of a crime. Although the courts have acknowledged that prisoners have obvious limitations placed on their privileges and rights, "it is well established that prisoners do not lose all their constitutional rights and that the Due Process and Equal Protection Clauses of the Fourteenth Amendment follow them into prison and protect them there from unconstitutional action on the part of prison authorities carried out under color of State law." Washington v. Lee, 263 F. Supp. 327, 331 (N.D. Ala.), aff'd sub nom., 389 U.S. 967 (1967). Furthermore, when the rights of those prisoners who are held as pretrial detainees are in question the courts have subjected the cases to even closer scrutiny. Anderson v. Nosser, 438 F.2d 183 (5th Cir. 1971).

PHYSICAL FEATURES — CROWDING

The Dallas County jail is located in two buildings referred to as the old jail and the new jail. The new jail is located in the new County Government Center. It was designated to accomodate 1220 inmates at capacity. The quarters now in use in the two buildings has a total capacity for 1370 inmates. During the first fourteen days of May 1972, the

peak number per day varied from 1491 on May 6th to 1693 on May 4th. The average peak number for the fourteen days was 1589. During 1971 the average daily number housed during three months of the year was more than 1700 and one month was more than 1800. The women's section located on one floor of the new jail consists of 25 cells containing 198 bunks. On the day of the trial there were 92 female inmates, leaving more than 100 bunks unoccupied. The failure to use all the bunks on this floor results from design problems which do not provide adequate segregation of male and female prisoners. The vacancies on the women's floor increases the crowding of the cells reserved for men.

Most of the inmates are lodged in cells each with 8 to 12 bunks which open into a "day room." The entire area is referred to as a "tank", the capacity of a tank varying from approximately 24 to 36. In addition to ten tanks there are 168 cells without a day room each containing several bunks. These open into a corridor.

All tanks for men are overcrowded having approximately 15 more inmates than the number of bunks. Those not assigned to bunks sleep on mattresses in the day room. The hospital ward for men is likewise overcrowded and it is common for men to sleep on mattresses in place of beds. Its capacity is 48. On the day of the Court's visit there were 62 persons who had been admitted.

At the time the new jail was built in 1966 the old jail was abandoned and became unusable for the detention of prisoners. It soon became apparent that the new jail was

inadequate, but no steps were taken to repair or remodel the facilities in the old jail until 1971. Early in 1972 a part of the old jail was opened and some prisoners transferred to it. Presently 150 inmates are lodged there. By remodeling and removing stored items an additional 550 men could be housed. In addition to the possibility of use of all quarters in the old jail the Sheriff reported that the 100 extra bunks in the women's section could be used for men by changing the floor plan.

In addition to the tanks and cells without day rooms the jail has a number of solitary cells, which are completely inadequate, used for punitive segregation and insane prisoners. Six have dimensions of 4'3" x 5'1". The rest measure 6'11" x 5'1" and 7'1" x 6'. Only four have running water. None have drinking fountains. The only facility for excrement is a hole in the floor which is rarely flushed. There is no outside light, the inside electric globe burning 24 hours a day. Mattresses are used in place of bunks. The only place to sit is on the floor or mattresses. Insane persons are placed in the solitary cells without the benefit of padding on the walls or a hammock for sleeping.

MEDICAL FACILITIES

The medical care facilities consist of an infirmary for men with 48 beds and one for women with 18 beds. There is provision for a nurse to be on duty 24 hours each day. In addition there is a doctor on call throughout the day. Previous requests by inmates for the nurse have been ignored, but recently a policy has been inaugurated of sending a note, termed a "kite", to the nurse immediately. Until recently the only dental care has been tooth extrac-

tion. The program has now been expanded to include filling. Examination of inmates is not adequate — when admitted they are tested only for tuberculosis and for venereal disease if suspected. Food handlers receive no examination.

PRACTICES, POLICIES and PROCEDURES

Censorship

Prior to the filing of this suit, the chief jailer enforced a policy of opening and reading each item of mail which was transmitted between prisoners and the outside. The stated purpose of this procedure was to insure security and to prevent the transmission of contraband. The jailer in charge of this procedure would read all of the inmate mail and had authority to refuse to send those letters which he found unacceptable for outside mailing. If there was matter in the letters which did not meet his approval, the jailer returned the letter to the inmate for rewriting. All letters had to be submitted to the jailer unsealed.

The first action taken in the present case was the enjoin the Sheriff from continuing this procedure as it applies to certain categories of mail. The inspection of the mail between the inmates and the persons or agencies set out in the order is now limited to superficial examination for possible contraband.

The testimony of Chief Rowland revealed that since the first of the year his department has stopped the censorship of all mail and has limited its inspection to merely discovery

of money or contraband which could be transmitted. In his opinion, the practice of censorship of the mail has little impact on the security of the jail.

Reading Matter

The inmates of the jail have access to periodicals and books by purchasing them off the commissary cart and through mail subscriptions. The reading matter sold from the cart is limited to a list of items approved by the Sheriff. The alleged criteria for the periodicals are (1) that they contain no pictures of nude persons and (2) that there be no pictures of weapons. The Sheriff or the chief jailer has the sole authority to decide what books or periodicals are admitted to the jail.

The plaintiffs presented at trial evidence of magazines which are sold from the cart, yet do not conform to the stated policy of the jail. There were several with pictures of nude women and guns and stories of crime. Furthermore, inmates have been refused permission to have magazines which do not violate the two criteria.

Jail Rules and Discipline

Previously there have been no written rules relating to conduct in the jail and inmates were not advised of any unwritten rules. Infraction of rules was punished by a supervisor on complaint of a guard or of a corridor boss who is merely an inmate chosen by the supervisor. It was not required that the inmate be advised of the charge and he could be placed in solitary, without a hearing, for an indefinite time. There was no provision for review.

The Sheriff testified that new rules have been promulgated and will be posted in each tank and in the corridors. New prisoners will likewise be given a copy. As of the date of the trial the rules had not been posted and even the Chief Jailer was unaware of their existence.

The Sheriff has likewise proposed a formal procedure for handling infractions of the rules. Under this procedure the guard or other jail personnel who witnesses the infraction must submit a written statement of the offense which is directed to a supervisor who reviews the report and then assesses the punishment. The prisoner is presented with a copy of the charge and the disposition made by the supervisor. On the back of the report the Sheriff has listed an appeals procedure which the prisoner may initiate after the supervisor has acted. There is no provision for notice of the charge prior to action by the supervisor and one member of the Appeals Board is the Jail Supervisor taking the punitive action. As of the trial this new procedure had not been put into effect.

Recreation & Exercise

There is no area or program for exercise and recreation for inmates in the jail. The prisoners are confined to their cells for the duration of their sentences or until their trial. While a prisoner is waiting on post conviction appeals, he remains in the jail and it is not uncommon for prisoners to be in jail for several years while the appeal is being considered.

When a person is placed in jail he is forced to remain in a cell with no opportunity to engage in recreational activities

other than reading and playing cards and dominos. The prisoners have no exposure to either sunlight or fresh air. In the new jail, the only outside light is transmitted through translucent windows. Artificial light is so poor that reading presents difficulties. The overcrowded cells, poor ventilation, poor lighting and lack of exercise all contribute to the physical deterioration of the inmates and these factors also tend to heighten their frustrations and anxieties. There is no opportunity to burn off surplus energy other than by mischievous conduct.

Rehabilitation and Counseling

Prior to the filing of this suit, there was no program of rehabilitation or education at the jail. There is no effort to influence the lives of the inmates in any positive manner. The county performs an exclusively custodial function of placing the accused and the convicted into crowded cells and letting them vegetate until their release. The county officials have completely ignored the rehabilitative role the jail should play in the criminal justice system.

In the past months the Chaplain has begun a small pilot program of teaching selected prisoners some rudimentary educational subjects. There is, however, no established program of evaluating the needs of the inmates and then providing them with education, vocational training or counseling.

There are no trained counselors for the inmates other than the voluntary work done by the chaplains. Men do not have the privilege of attending religious services. The only religious service available is for the chaplain to come into

the tank and speak. The practice of the jail is totally devoid of any constructive measures which might act on an individual prisoner to influence him to become a contributing member of society. The inmates are relegated to the dehumanizing existence of idle isolation in a cage. The fundamental objective of correctional institutions, that of rehabilitation, has been subordinated to the limited goal of punishment and security.

Classification and Segregation of Prisoners

The inmate population of the Dallas County jail consists of arrestees, persons convicted of misdemeanors serving their sentence, convicted felons awaiting either a decision on appeal or transfer to the Texas Department of Corrections, and federal prisoners awaiting trial. The jail officials, however, have not made any attempt to segregate the various classes of prisoners in any meaningful way. The Sheriff testified that he was instituting a system of classification based on a maximum, medium, and minimum security risk standard. At the present time, however, this program has not been implemented. The inmates of the jail are assigned to cells on the basis of their name, that is, by alphabetical order.

The pretrial detainees in most instances experience treatment similar to that accorded convicted criminals, but in some respects they are in a worse position. They are not permitted to engage in the limited educational program at the jail, and they are not allowed to work in the relative freedom of the trusty job. Ironically, when one compares the opportunities for education, recreation, and training at

the Texas Department of Corrections to the total lack of any programs at the Dallas jail, the obvious conclusion is that these technically innocent individuals suffer worse punishment in the jail than the convicted in the penitentiary. Ostensibly, the chief purpose of placing the arrestee in jail is to guarantee his appearance at trial. His incarceration is, in most instances, because he cannot afford to pay a bondsman. The result is that pretrial detainees are subjected to the demanding confinement in the jail without trial solely because they lack money.

The plaintiffs have alleged that the jail officials enforce a policy of racial segregation of the prisoners. The Sheriff denies that there is a policy of racial segregation, but he admitted that there are a number of tanks which are all black or all white. In the visit of the Court to the jail, there was almost complete segregation of blacks and whites.

Guards

The Sheriff testified in the trial that one of the major restrictions on providing any meaningful programs for the inmates is the lack of adequate supervisory personnel. There are 99 guards divided into three shifts. While the guards are on duty, they supervise the five floors of the new jail and the old jail which together house more than 1500 persons. On account of the high ratio of prisoners to guard the role of the guard is limited to housekeeping and to security measures such as controlling inmate conduct and preventing escapes. According to the Sheriff, the small staff has resulted in restrictions being placed on the privileges of inmates to use telephones and on coordinating

visiting sessions and has likewise prevented and development and coordination of recreational, educational, and vocational training programs.

The Cop-out System

During the trial of this action, the plaintiffs raised a constitutional question regarding the practice of admitting investigators into the jail to interview the inmates concerning their plea on the charges for which they are held. The investigators, called cop-out men, are individuals hired by the District Attorney and assigned to particular State courts. Their chief role is to work out an agreeable recommendation for punishment to be presented by the District Attorney if the inmate pleads guilty. As a matter of policy, the investigators will not discuss a plea or punishment with an inmate who has a lawyer unless the lawyer is present. If the inmate has no lawyer, the cop-out man interviews him, regardless of whether the inmate has requested the interview. Although the investigators are not part of the Sheriff's staff, they are given relatively free access to the jail and the inmates. The plaintiffs have asked that the Sheriff be enjoined to restrict the access of cop-out men to the prisoners except when the prisoner makes a specific request for an interview.

APPLICABLE LAW

This action is primarily a class action. While there was testimony relating to individual grievances this memorandum opinion and judgment relates only to the abuses and deprivations common to all inmates.

Texas Statutory Requirements

The Texas legislature has provided for certain miminum standards for county jail facilities.[1]

In the statutes, the legislature has charged the Commissioners Court with the ultimate responsibility for providing "safe and suitable jails." The laws also state that the sheriff is to be the keeper of the jail, with the right to delegate the responsibility to a jailer who will be under his supervision and control.

The statute requires that the jail provide for adequate segregation for the prisoners. The county must separate "first offenders awaiting trial, from all classifications of convicted prisoners." As heretofore stated there is no segregation of pretrial detainees from other inmates in the Dallas jail. Although there is some segregation of those suspected of insanity from other inmates, the facilities for housing do not comply with the statute.

Article 5115 sets down the minimum standards on the dimensions and capacities of the cells in county jails. Solitary cells are to have a minimum of 40 square feet, and larger cells must have a minimum of 18 square feet per prisoner. The law prescribes that 24 is the maximum number of prisoners which may be placed in a "tank."

The sanitation and health requirements for jails include the provision of at least one water closet and combination lavatory and drinking fountain for each 12 prisoners or fraction thereof. In addition, the law requires that there be a shower for each 12 prisoners and another water closet

and fountain for each day room. Each inmate must be provided a bunk.

The defendants have been quite candid in their admission that the county does not provide facilities which conform to article 5115. Furthermore, they do not contest the pendent jurisdiction of this Court to adjudicate the State law question. The failure to provide the necessary space to *house the* prisoner population is one of the chief causes of the deprivations which the inmates experience. Living in the overcrowded cells with less than minimal sanitary facilities has a dehumanizing effect on the persons subject to these conditions. Already this year the Dallas jail has witnessed a riot of inmates protesting the substandard and inhumane conditions.

The charges of inadequate medical treatment and the use of the solitary cells arise in large part from the deficiencies in the physical facilities. The overcrowding of the infirmary prevents the treatment of many who should be admitted and the lack of space makes the proper care impossible. The use of the solitary cells is one of the significant challenges of the plaintiffs. The plaintiffs have charged that confinement in the small cells with no sanitary facilities or running water constitutes cruel and unusual punishment and a violation of due process. By the defendants' own admission, the cells do not meet the minimum requirements of the State statute. The Court therefore, is not compelled to apply subjective criteria such as "unnecessary cruelty,"[2] "standards of fairness and justice,"[3] and "evolving standards of decency"[4] to decide the question of cruel and unusual punishment. The statute provides an objective basis for judging

the jail facilities, and the Dallas jail does not withstand the test of the local law.

The County Health Officer testified that the inmates working in the kitchen did not have health certificates. Article 705d of the Texas Penal Code requires that food handlers have an examination by a licensed physician to detect the presence of communicable diseases.

Eighth Amendment

In addition to violating State statutes, the plaintiffs contend that the county officials subject them to cruel and unusual punishment prohibited by the eighth amendment because of the imposition of the following conditions: overcrowded cells and tanks necessitating sleeping in day rooms and corridors; the use of inadequate and unsanitary solitary cells; unclassified assignment to tanks and cells; lack of physical exercise and of a rehabilitation program; supervision of inmates by other inmates called corridor bosses; inadequate medical facilities; the lack of rules of conduct and rules for discipline procedures.

In the past the courts limited their review under the eighth amendment to isolated incidents involving physical brutality.[5] The focus has been on a particular practice and not on a broad view of the system as the cause of the punishment. Recently the courts have expanded their examination of the charges of cruel and unusual punishment giving consideration to the effect of a "combination of circumstances" upon the contested act, practice or system.[6]

They have placed emphasis on the role of the eighth amendment as it applies to overall prison conditions which have been found detrimental to the mental and moral well being of inmates as well as being physically debilitating.[7] As early as 1910 the Supreme Court in Weems v. United States, 217 U.S. 349, held that the eighth amendment ". . . is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice." Id 378. The Court declared further that it was the intent of the drafters of the amendment that it cover ". . . exercises of cruelty by laws other than those which inflicted bodily pain or mutilation." Id 372. In Robinson v. California, 370 U.S. 660 (1962) the Court concluded that the eighth amendment applies to the states.

The emphasis on nonphysical concepts of cruel and unusual punishment gained impetus in the courts as it is applied in a correctional context in the case of Jackson v. Bishop, 404 F.2d 571 (8th Cir. 1968). Although this case considered the use of physical punishment on inmates, the Court condemned such punishment because of its lack of rehabilitative potential.

> "Corporal punishment generates hate toward the keepers who punish and toward the system which permits it . . . It frustrates correctional and rehabilitative goals . . . Whipping creates other penological problems and makes adjustment to society more difficult." Id. at 580.

The trend toward examining programs for rehabilitation in conjunction with physical abuses and inhumane treatment has been articulated in the decision of Holt v. Sarver, 309 F.

Supp. 362 (E.D. Ark. 1970). which declared the entire Arkansas prison system violative of the eighth amendment constituting cruel and unusual punishment.

The Arkansas prison system displayed shocking practices of brutality and injustices perpetrated on prisoners. The Court was confronted with numerous practices which even in isolated use would have constituted cruel and unusual punishment. In spite of the obvious cruelty in the practices, the Court also placed emphasis on them in the context of the system's failure to offer any program of rehabilitation and to prepare inmates for release. In this connection it stated:

> "The absence of an affirmative program of training and rehabilitation may have constitutional significance where in the absence of such a program conditions and practices exist which actually militate against reform and rehabilitation . . . The absence of rehabilitation services and facilities . . . remains a factor in the overall constitutional equation . . ." 309 F. Supp. 379.

Holt v. Sarver is a recognition of one of the most widely regarded theories of penology that restraint and retribution have a tendency to produce recidivism in the inmates upon their release. The report of the President's Commission on Law Enforcement and Administration of Justice; The Challenge of Crime in a Free Society (1967) had this to say with reference to our penal institutions:

> "Life in many institutions is at best barren and futle, at worst unspeakably brutal and degrading. To be sure, the offenders in such institutions are incapacitated from committing further crimes while serving

> their sentences, but the conditions in which they live are the poorest possible preparation for their successful reentry into society, and often merely reinforces in them a pattern of manipulation or destructiveness." Id. 159.

Rehabilitation must be the overriding goal of our correctional institutions. Unless society subordinates all of the correctional purposes of the goal of rehabilitaton, it faces the paradox of promoting the production rather than the reduction of crime.

Another important deficiency in the Dallas jail program is the lack of any program for recreation or exercise. The Chief Justice of the Supreme Court. Warren E. Burger, has stated that recreation is a necessary concommitant with education in our prisons. He recognized that one of the more pervasive evils in our correctional institutions is idleness and gave this admonition concerning the lack of programs in our jails:

> "Playing cards, watching television or an occasional movie (the Dallas jail has no video recreation), with nothing more, is building up to an expensive accounting when these men are released — if not before. Such crude recreation may keep quiet for the time, but it is a quiet that is ominous for the society they will try to reenter."[8]

The lack of physical exercise has been considered by the Courts in the context of being cruel and unusual punishment. In Sinclair v. Henderson, 341 F. Supp. 1123 (E.D. La. 1971), the Court reviewed the charge that the failure to afford inmates confined on Death Row an opportunity for exercise was a violation of the eighth amendment. It noted

the decision in Morris v. Travisono, 310 F. Supp. 857 (D.R.I. 1970), which required the State to provide outdoor exercise to prisoners and concluded that "[c]onfinement for long periods of time without the opportunity for regular outdoor exercise does, as a matter of law, constitute cruel and unusual punishment . . ." 331 F. Supp. at 1131.

The plaintiffs have challenged the use of the punitive segregation cells as a violation of the eighth amendment. As heretofore stated in the discussion of the State law, most of the cells do not conform to the standards provided in the statute. In Novak v. Beto, 452 F.2d 661 (5th Cir. 1971) rehearing denied en banc, No. 31116 (5th Cir., Mar. 8, 1972), the Court considered the propriety of the use of solitary confinement at the Texas Department of Corrections. In that case the facility in queston conformed to the physical requirements of the statute. In upholding the use of the solitary cells, the majority placed great weight on the fact that the cells were sanitary and there was no "deprivation of the basic elements of hygiene." Id. at 665. The Novak case is clearly distinguishable from the situation at the Dallas jail. Here there are no sanitary facilities, the cells are smaller than the statutory requirement and there has been in the recent past the practice of placing the inmate in the cell nude and on bread and water diet. The use of the substandard facilities at the Dallas jail for punitive segregation or any other purpose would constitute cruel and unusual punishment.

Fourteenth Amendment

The plaintiffs have asserted that the practices and policies of the jail in relation to discipline for infraction of

the rules, particularly with reference to pretrial detainees infringes on their civil rights protected by the fourteenth amendment. There are several recent cases bearing on this subject.

In Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971) inmates of a Virginian prison complained of the manner in which punishment was inflicted. The Court held that inadjudicatory proceedings "certain due process rights are both necessary and will not unduly impede legitimate prison functions." Id. 653. Two of these requirements the Court declared were: "First, the decision must be made by an impartial tribunal — Second, there shall be hearing." Id. 653.

Sinclair v. Henderson, 341 F. Supp. 1123 (E.D. La. 1971) was a case involving discipline of prisoners on death row in a Louisiana prison. The Court held (1) there must be rules officially promulgated and communicated to the prisoner (2) the prisoner must be given official written notice of the specific charge against him (3) before serious punishment, such as punitive segregation, can be imposed, the prisoner must be given a hearing at which he shall have an opportunity to be heard (4) the imposition of punishment should be made by one other than the accusing guard.

These two cases deal with convicted felons confined in prison. The inmates of the Dallas jail in addition to those serving sentences for misdemeanors includes pretrial detainees and men whose sentences are on appeal. All are entitled to due process in the assessment of punishment.

It is, however, not necessary that the procedure for inmates in all institutions to receive exactly the same treatment in order for their rights to be protected. There is no question in this case or in Landman and Sinclair of the power of the person in charge to discipline the inmates. The proper operation of the institution requires order. It is recognized that when rules are violated there is need to act quickly and in a way that will not disrupt the security of the jail and the safety of the other inmates. It seems reasonable to place inmates in solitary for short periods of time without a hearing in case of certain violations and such action would not be a violation of rights under certain circumstances.

The procedure rules for discipline promulgated by the Sheriff appear to be reasonable except that an inmate who is confined in a solitary cell for more than three days should have a hearing and if an appeal is taken the person charging the inmate should not be on the Board. The Sheriff is likewise to be complimented for limiting the maximum time in solitary to fifteen days when heretofore it has been unlimited.

The recent en banc decision of Anderson v. Nosser, ... F.2d ..... (5th Cir. 1972) holds that confinement of arrestees under the conditions existing in a Mississippi prison were a violation of due process. Here conditions are not similar and we do not hold that the mere confinement of the inmates in the Dallas County jail is a failure of due process.

CONCLUSION

The correctional programs and facilities of the Dallas County jail are in desperate need of upgrading and expansion. The county does not provide the minimum facilities required by law. The policy of the county has been to confine the accused and the convicted as inexpensively as possible thereby preventing their circulation in society. Punishment results from the inadequate facilities and unpleasant experience. The present jail system serves no other purpose.

The local jail performs the unique role of being a misdemeanant institution, that is, an institution for persons charged with petty crimes with short sentences. The local jail is the only correctional institution to which the misdemeanant is associated, but the term correctional is a euphumism. Dallas County has shown complete indifference to its responsibility to attempt rehabilitation of those offenders charged to its care.

The Sheriff and chief jailer in recent months made an effort to change some of the deficient conditions at the jail. For these efforts they are to be commended. The county has begun renovating the old jail; medical and dental programs have been upgraded; censorship of mail has been limited; punitive segregation has been limited to 15 days; the disciplined prisoner is not deprived of his clothing; a pilot remedial education program is underway; and the inmates have increased telephone and visitation privileges.

The Sheriff has stated that he is prepared to initiate more programs and to improve the jail, but he is handicapped by

a small staff and small budget. There is no quantitative statement of the costs which the necessary improvements will require. This Court recognizes that enlarging the jail will be costly, but "inadequate resources can never be an adequate justification for depriving any person of his constitutional rights." Hamilton v. Love, 328 F.Supp. 1182 (E.D. Ark. 1971).

The injunctive order provided herein is, of course, only the minimal action which is required. The Court is encouraged by the apparent good faith and interest of the Sheriff's Department in providing a "safe and suitable jail." Although this Court does not invite judicial review of jail administration, it is hoped that public attention to jail conditions which this action has produced will stimulate interest in the community to do something about our jails. The recent events at Attica, New York and the disturbance at the Dallas jail should be warnings of the need to re-examine and upgrade correctional programs. The costs for making the changes may be substantial. But the consequences of inaction are greater.

In view of the foregoing conditions at the Dallas County jail, it is the Judgment of this Court:

1. The Commissioners Court is enjoined from further violating the provisions of Article 5115 of the Texas Revised Civil Statutes and is directed to provide immediately as follows:

a. Sufficient cells and tanks to accommodate a number of inmates equal to the largest number in the Dallas County jail during 1972 in any one day.

b. Solitary cells of not less than 40 sq. feet, provided with a bunk, water closet and a combination drinking fountain and lavatory.

c. The capacity of the hospital ward for men shall be increased and bunks provided for all patients confined therein.

d. Padded cells with hammocks for insane persons.

It is suggested in this connection that the old jail be renovated and the women's floor in the new jail be redesigned to accommodate both male and female inmates. A reasonable time for the completion of these improvements in the opinion of the Court is six months. Even with such remodeling and repairs the provisions of Article 5115 will not be wholly complied with. The Court directs that the Commissioners Court make immediate plans for full compliance within a reasonable time. A Regional Jail is a possible answer to the complete fulfillment of these requirements but plans for a Regional Jail are not sufficient reason for the failure to implement all the statutory provisions for a "safe and suitable" jail as required by Article 5115.

2. The Commissioners Court is directed to provide an outdoor area for exercise and a rehabilitative program of recreation. As a temporary arrangement it is suggested that the roof of the jail be remodeled to provide for such facilities, the possibility for which was suggested by the Sheriff. In a permanent plan for new facilities, quarters should be provided for chapel services and educational programs.

3. The Commissioners Court is directed to provide jail guards sufficient for security for jail facilities without the use of inmate assistance.

4. The permanent injunction heretofore issued relating to censorship of mail is affirmed and carried forward in this judgment. The Sheriff is directed not to open or censor mail transmitted between inmates of the jail and the following persons: courts, prosecuting attorneys, probation and parole officers, governmental agencies, lawyers and the press.

5. The preliminary injunction, heretofore issued relating to the destruction of reading matter belonging to inmates is made a permanent injunction and the Sheriff and other jail officials are enjoined from destroying law books, legal materials, legal documents, books, magazines and newspaper clippings provided such material is maintained in good condition and does not create a fire or health hazard.

6. While this Court will not interfere in the standards set up by the Sheriff for inmates receiving magazines or books, it appears that the policy has not been adhered to and the Sheriff is directed to see that greater care is exercised in determining the books and magazines made available to inmates so as to permit inmates to have reading material not prohibited and to restrict the receipt by inmates of prohibited material.

7. The Sheriff is directed to make effective the new policy relating to rules of conduct of inmates. These rules must be communicated to the inmates apprising them of what conduct can subject them to discipline, the penalty for

infraction and the procedure by which such a determination will be made. Before any punishment for confinement of more than 3 days in solitary is inflicted hearings should be held. In case of the appeal of any sentence the officer charging or sentencing the inmate should not be a member of the Board of Appeals.

8. The Sheriff is directed not to allow persons to see prisoners except with the consent or request of the inmates. This has particular reference to "cop-out" men, who have had free access to the jail.

9. The Sheriff is directed to inaugurate a classification system taking into consideration security, integration and status of inmates as to whether they are pretrial detainees or convicted inmates.

10. The Sheriff is enjoined from using inmates as corridor bosses to enforce rules and preserve discipline.

11. The Sheriff is directed not to use any cell of less than 40 square feet, not to place more inmates in cells and tanks than those such facilities are designed to accommodate, nor to place anyone in solitary cell unless it is provided with a bunk, water closet and a combination fountain and lavatory.

12. The Sheriff is directed to have employees and inmates handling food examined by a licensed physician to detect the presence of communicable diseases as required by Article 705d of the Texas Penal Code.

Attorneys fees are denied. Costs are taxed against Defendants.

While this opinion closes this case it may be reopened within a reasonable time on application of the plaintiffs contending that Defendants are not making a diligent, good faith effort to comply with the order of this Court.

SARAH T. HUGHES
United States District Judge

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1. Article 5115 of the Texas Revised Civil Statutes Annotated provides in pertinent part as follows:

The Commissioners Court shall provide safe and suitable jails for their respective counties, and shall cause the same to be maintained in good sanitary condition at all times, properly ventilated, heated, and lighted . . .

SUITABLE SEGREGATION

The term "safe and suitable jails," . . . shall be construed to mean jails which provide adequate segregation facilities . . . separating . . . first offenders, awaiting trial, from all classifications of convicted prisoners . . .

[F]or . . . temporary holding of each person suspected of insanity, or who has been legally adjudged insane, there shall be provided a special enclosure or room, not less than forty (40) square feet . . . Furthermore, the floor and the walls of such enclosure shall be provided with a soft covering designed to protect a violent person, temporarily held therein, from self-injury or destruction . . .

SUITABLE SECURITY AND SAFETY

For the purpose of this Act, the term "safe and suitable jails" is further defined to mean jails which provide adequate security and safety facilities by having separate cells or compartments, dormitories and day rooms, of varying dimensions and capacities for prisoners confined therein, except that, if practicable, no one such cell or compartment shall be designed for confining two (2) prisoners only. Cells or compartments shall be designed to accommodate from one (1) to eight (8) prisoners each, and furthermore, such dormitories and day rooms shall be designed to accommodate not more than twenty-four (24) prisoners each . . . All cells, compartments and dormitories for sleeping

purposes, where each such cell, compartment or dormitory is designed to accommodate three (3) or more prisoners, shall be accessible to a day room to which prisoners may be given access during the day. Cells for one (1) prisoner only shall have a minimum floor area of forty (40) square feet and all other cells, compartments, dormitories and day rooms . . . shall have minimum floor area equal to eighteen (18) square feet for each prisoner to be confined therein.

SUITABLE SANITATION AND HEALTH

The term "safe and suitable jails" is further defined to mean jails which provide adequate facilities for maintaining proper standards in sanitation and health. Each cell designed for one (1) prisoner only shall be provided with a water closet and a combination lavatory and drinking fountain, table and seat. Each cell, compartment or dormitory designed for three (3) or more prisoners, shall be provided with one (1) water closet and one (1) combination lavatory and drinking fountain for each twelve (12) prisoners or fraction thereof to be confined therein. Furthermore, all such cells, compartments and dormitories shall be provided with one (1) bunk, not less two (2) feet, three (3) inches wide and six (6) feet, three (3) inches long, for each prisoner to be confined therein. Furthermore, each day room for the confinement of three (3) or more prisoners shall be provided with one (1) water closet, one (1) combination lavatory and drinking fountain and one (1) shower bath for each twelve (12) prisoners, or fraction thereof, to be confined therein. Furthermore, each day room shall be otherwise suitably furnished.

2. Wilberson v. Utah, 99 U.S. 130, 136 (1878).

3. Louisiana ex rel. Francis v. Resweber, 329 U.S. 470 (1947) (Frankfurter, J. concurring).

4. Trop v. Dulles, 356 U.S. 86, 101 (1958).

5. See, e.g., Wiltsie v. California Dep't of Corrections, 406 F.2d 515 (9th Cir. 1968); Jordan v. Fitzharris, 257 F. Supp. 674 (N.D. Cal. 1966); Talley v. Stephens, 247 F. Supp. 683 (ED Ark 1965)

6. See Novak v. Beto, 453 F.2d 661, 675 (5th Cir. 1971) (Tuttle, J., concurring in part and dissenting in part).

7. See, e.g., Jackson v. Bishop, 401 F.2d 571 (8th Cir. 1968); Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark 1969), aff'd. 442 F.2d 304 (8th Cir. 1971).

8. Address by Chief Justice Warren E. Burger, National Conference on Corrections, Dec. 7, 1971.

APPENDIX C

CONSTITUTIONAL PROVISIONS AND STATUTES

CONSTITUTION OF THE UNITED STATES

EIGHTH AMENDMENT

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TEXAS STATUTES

TEXAS REVISED CIVIL STATUTES

Art. 5115 Jails provided

The Commissioners Court shall provide safe and suitable jails for their respective counties, and shall cause the same to be maintained in good sanitary condition at all times, properly ventilated, heated and lighted; structurally sound, fire resistant and kept in good repair. Furthermore, they

shall cause the jails in their respective counties to be kept in a clean and healthy condition, provided with water of safe quality and ample quantity and sewer disposal facilities in accordance with good sanitary standards, and provided with clean, comfortable mattresses and blankets, sufficient for the comfort of the prisoners, and that food is prepared and served in a palatable and sanitary manner and according to good dietary practices and of a quality to maintain good health.

SUITABLE SEGREGATION

The term "safe and suitable jails," as used in this Act, shall be construed to mean jails which provide adequate segregation facilities by having separate enclosures, formed by solid masonry or solid metal walls, or solid walls of other comparable material, separating witnesses from all classifications of prisoners; and males from females; and juveniles from adults; and first offenders, awaiting trial, from all classifications of convicted prisoners; and prisoners with communicable or contagious diseases from all other classifications of prisoners. Furthermore, the term "safe and suitable" jails shall be construed to mean jails either now or hereafter constructed, except that, in lieu of maintaining its own jail, any county whose population is not large enough to justify building a new jail or remodeling its old jail shall be exempt from the provisions of this Act by contracting with the nearest available county whose jail meets the requirements set forth in this Act for the incarceration of its prisoners at a daily per capita rate equal to the cost of maintaining prisoners in said jail, or at a daily rate mutually agreed to by the contracting counties.

No person suspected of insanity, or who has been legally adjudged insane, shall be housed or held in a jail, except that such a person who demonstrates homicidal tendencies, and who must be restrained from committing acts of violence against other persons, may be held in a jail for a period of time not to exceed a total of seven (7) days. Furthermore, for such temporary holding of each person suspected of insanity, or who has been legally adjudged insane, there shall be provided a special enclosure or room, not less than forty (40) square feet and having a ceiling height of not less than eight (8) feet above the floor. Furthermore, the floor and the walls of such enclosure shall be provided with a soft covering designed to protect a violent person, temporarily held therein, from self-injury or destruction. One hammock, not less than two (2) feet, three (3) inches wide and six (6) feet, three (3) inches long, made of elastic or fibrous material shall be provided in each such special enclosure.

SUITABLE SECURITY AND SAFETY

For the purpose of this Act, the term "safe and suitable jails" is further defined to mean jails which provide adequate security and safety facilities by having separate cells or compartments, dormitories, and day rooms, of varying dimensions and capacities for prisoners confined therein, except that, if practicable, no one such cell or compartment shall be designed for confining two (2) prisoners only. Cells or compartments shall be designed to accommodate from one (1) to eight (8) prisoners each, and furthermore, such dormitories and day rooms shall be designed to accommodate not more than twenty-four (24)

prisoners each. Furthermore, in each such jail there shall be provided individual one-man or one-woman cells to accommodate not less than thirty per cent (30%) of the total designated prisoner capacity of the jail and dormitory-type space may be provided to accommodate not more than forty per cent (40%) of the total designated prisoner capacity of the jail. All cells, compartments and dormitories for sleeping purposes, where each such cell, compartments or dormitory is designed to accommodate three (3) or more prisoners, shall be accessible to a day room to which prisoners may be given access during the day. Cells for one (1) prisoner only shall have a minimum floor area of forty (40) square feet and all other cells, compartments, dormitories and day rooms (including safety vestibule area) shall have a minimum floor area equal to eighteen (18) square feet for each prisoner to be confined therein. The ceiling height above finished floor shall be not less than eight (8) feet for any cell, compartment, dormitory or day room where prisoners are confined.

The term "safe and suitable jails," as used in this Act, is further defined to mean that, for reasons of safety to officers and security, the entrance and/or exit to each group of enclosures forming a cell block or group of cells and/or compartments used for the confinement of three (3) or more prisoners shall be through a safety vestibule having one (1) or more interior doors in addition to the main outside entrance door to such cell block, all arranged to be locked, unlocked, opened or closed by control means located outside of any such enclosure or cell block. Furthermore, that all such enclosures or cell blocks, for the confinement

of prisoners, shall be separated from the building wall on at least one (1) side, by a corridor not less than three (3) feet wide and so designed that no prisoners in confinement areas shall have direct access to windows in the walls of the building.

SUITABLE SANITATION AND HEALTH

The term "safe and suitable jails" is further defined to mean jails which provide adequate facilities for maintaining proper standards in sanitation and health. Each cell designed for one (1) prisoner only shall be provided with a water closet and a combination lavatory and drinking fountain, table and seat. Each cell, compartment or dormitory designed for three (3) or more prisoners, shall be provided with one (1) water closet and one (1) combination lavatory and drinking fountain for each twelve (12) prisoners or fraction thereof to be confined therein. Furthermore, all such cells, compartments and dormitories shall be provided with one (1) bunk, not less in size than two (2) feet, three (3) inches wide and six (6) feet, three (3) inches long, for each prisoner to be confined therein. Furthermore, each day room for the confinement of three (3) or more prisoners shall be provided with one (1) water closet, one (1) combination lavatory and drinking fountain and one (1) shower bath for each twelve (12) prisoners, or fraction thereof, to be confined therein. Furthermore, each day room shall be otherwise suitably furnished.

The provision of this Act shall become applicable to all jails hereafter constructed, upon its effective date, and to existing jails within four (4) years from its effective date.

The Texas State Department of Health shall have general charge and supervision of the enforcement of the provisions of this Act, and it is hereby made the duty of the Texas State Department of Health or any Inspector or Agent of the Texas State Department of Health to make periodic inspection of the aforesaid jails and issue an advisory manual setting forth the principles of safe and healthful provisions, which shall be distributed to Commissioners Courts and/or custodians of jails and, furthermore, to officially notify County Commissioners Courts, in writing to comply fully with the provisions of this Act.

Act July 22, 1876, p. 52; G.L. vol. 8, p. 888. Amended by Acts 1957, 55th Leg., p. 637, ch. 277, § 1.

Art. 5116 Sheriff and jailer

(a) Each sheriff is the keeper of the jail of his county. He shall safely keep therein all prisoners committed thereto by lawful authority, subject to the order of the proper court, and shall be responsible for the safe keeping of such prisoners.

(b) The sheriff may appoint a jailer to take charge of the jail, and supply the wants of those therein confined; but in all cases the sheriff shall exercise a supervision and control over the jail.

(c) The commissioners court of Bexar County, Texas may appoint a jail administrator who shall exercise all authority, supervision, and control over the jail, as well as all other statutory duties of the sheriff with respect to the jail.

Amended by Acts 1973, 63rd Leg., p. 520, ch. 224, § 1, eff. June 11, 1973.

Art. 5117. Marshal may use jail

Sheriffs and jailers shall receive into their jails such prisoners as may be delivered or tendered to them by any United States Marshal or his deputy for any district of Texas, and shall safely keep such prisoners until they are demanded by such marshal or deputy, or are discharged by due course of law. The marshal by whose authority such prisoners are received and kept shall be directly and personally liable to the sheriff or jailer for the jail fees and all other expenses of the keeping of such prisoners, such fees and expenses to be estimated according to the laws regulating the same in other cases.

Act May 12, 1846, p. 268; G.L. vol. 2, p. 1574; Act August 26, 1856, p. 88; G.L. vol. 4, p. 506.

TEXAS CODE OF CRIMINAL PROCEDURE

Art. 2.18 Custody of prisoners

When a prisoner is committed to jail by warrant from a magistrate or court, he shall be placed in jail by the sheriff. It is a violation of duty on the part of any sheriff to permit a defendant so committed to remain out of jail, except that he may, when a defendant is committed for want of bail, or when he arrests in a bailable case, give the person arrested a reasonable time to procure bail; but he shall so guard the accused as to prevent escape. Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.